IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO: 1230 OF 2001 (M/S)
(Old No. 13379/2000)

Raheem Ahmad, S/o Allahdiya, R/o Village Bhandgaon, Tehsil Karn Prayag, District Chamoli.

---------Petitioner.

Versus

1-The District Judge, District Chamoli.
2-The Prescribed Authority (Under U.P. Public Premises {Eviction of Unauthorized occupants} Act] Karn Prayag, District Chamoli.
3-State of Uttar Pradesh.

------------Respondents

Sri Lok Pal Singh, learned counsel for the petitioner.
Learned Chief Standing Counsel for the respondents.

Dated: April 21, 2006.

HON'BEL RAJESH TANDON, J.

Heard Sri Lok Pal Singh, learned counsel for the petitioner and learned standing counsel for the respondents.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 06-08-1999 and 18-10-1996 passed by the respondent no. 1 and 2.

Briefly stated in pursuance of the inspection report dated 31-12-94 report was made on 01-01-1995 for the ejectment of the petitioner stating therein that the petitioner has raised constructions over Khasra No. 424 area 4 Mutthis belonging to the State.

A notice under Section 4/5 was issued in Form "Ka" vide order dated 14-03-1995 in pursuance of the said notice the petitioner has filed his written statement stating therein that it is not public land and he is in possession over the land since 1970. However the

respondent no.2 has held that the petitioner is in possession of the public land therefore the order of injunction had been passed.

The grievance of the petitioner is that since the land is a agricultural and in *"Writ petition No. 5814 of 2001 Baldeo Raj Vs. State of U.P. reported in ALI Page 872 it has been held that amended definition excludes the land vested in the management of the Gaon Sabha it has been held as under "the land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures" and as such the Court has observed that proceedings under Section 120 B may be initiated by the Gaon Sabha to evict such persons on proceedings being initiated as envisaged therein. In order to avoid a conflict of jurisdiction arising between the powers conferred under that Act and the power under the Act, referred to above, the definition given to the expression 'public premises' has deliberately excluded from its purview land vesting in the Gaon Sabhas some other local authority for which provisions exists in law relating to land tenures."*

"Similar view has been taken by the Uttaranchal High court in the case of Harish Chandra Vs. State of U.P. reported in 2002 (1) E.L.C. page 508 (H.C.) and it has been observed as under:

"6. In the present for the disputed land is admittedly used by the petitioners for the purposes of agriculture as is evident form the statement on record that the petitioners are in occupation since 1380 Fasli. The U.P. Zamindari Abolition and Land Reforms Act itself provides procedure for eviction of unauthorized occupants under Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act. The agricultural land is not covered under

the U.P. Public Premises (Eviction of Unauthorized Occupants), Act, as is evident form the definition of U.P. Public Premises (Eviction of Unauthorized Occupants), Act, 1972 which reads under:

"2(b)'Premises' means any land (including any forest land or trees standing' thereon, or covered by water, or a road maintained by he State Government or land appurtenant to such road) or any building or part of a building and includes-

(i) the garden, grounds and out houses, if any, appertaining to such building or part of a building; and

(ii) any fittings or fixtures affixed to or any furniture supplied with such building or part of a building for the more beneficial enjoyment thereof;

but does not include land which for the time being is held by a tenure holder under any law relating to land tenures."

"2.(e) ' Public premises, means any premises belonging or taken on lease or requisitioned by or on behalf of the State Government an includes any premises belonging to or taken on lease by or on behalf of-

(v) any company as defined in Section 3 of the companies Act, 1956 in which not les than fifty-one present of the paid up share capital held by the State Government; or

(vi) any local authority; or

(vii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority)owned or controlled by the State Government; or

(viii) any society registered under the Societies Registration Act, 1890, the government body

whereof consists, under the rules or regulations of the society, wholly or public officers, or nominees of the State Government or both; and includes,-

(i) Nazul land and or any other premises entrusted to the management of a local authority (including any building built with Government funds on land belonging to the State Government after the entrustment of the land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures);

(ii) Any premises acquired under the Land Acquisition Act, 1894 with the consent of the State Government for a Company (as defined in that Act) and held by that company under an agreement executed under Section 41 of that Act providing for re-entry by the State Government in certain conditions.

7- Therefore, a conjoin reading of the definitions given under the U.P. Public Premises (Eviction of Unauthorized Occupants), Act 1972 of the premises and public premise clearly exclude the application of the provisions of the U.P. Public Premises (Eviction of Unauthorized Occupants), Act, in case a tenure holder holds the land for the time being. In the present case, the evidence is on record that the petitioners were in possession on the disputed land form 1380 Fasli. Therefore, at the time when proceedings were initiated for eviction, the petitioners were a tenure holder for the time being.

8- Hence, the proceedings could only be drawn under U.P. Zamindari Abolition and Land Reforms Act and could not have been drawn under the U.P. Public Premised (Eviction of Unauthorized Occupants), Act. Thus, the proceedings initiated under the U.P. Public Premises (Eviction of Unauthorized Occupants), Act which gave rise to these writ petition, were without jurisdiction."

In view of the aforesaid proposition of law, the matter is sent back to the Prescribed Authority for deciding the case afresh on the basis of the material evidence on record. The petitioner as well as respondent both are permitted to lead additional evidence in order to show that the land is covered under Gaon Sabha or not. Both the parities are permitted to lead evidence in the light of the judgment reported in 1984 A.L.J. 872 2002(1) E.L.C. 508 (HC).

The matter is sent back to the Prescribed Authority for deciding the matter afresh in the light of the observations made above.

Consequently, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

21/04/2006
A.Roy